FILE COPY

FILED
JAN 3 1931
CHARLES ELMORE CROP
CLERK

In the Supreme Court United States

No. 38

October Term, 1929

AXEL LANGNES, Owner of the Diesel Halibut Vessel, "ALOHA," Her Engines, etc.,

Petitioner,

vs.

WINFIELD A. GREEN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Reply Brief of Petitioner, Axel Langnes

H. B. JONES,
ROBERT E. BRONSON,
Proctors for Petitioner.

614-621 Colman Building,
Seattle, Washington.

(34,748)

MARTIN & DICKSON, PRINTERS

INDEX

Page

ARGUMENT 11

(a) The relation of proximate cause to the right to limit 12

(b) Discussion of cases relied upon by respondent 28

(c) Denial of certiorari imports no approval or opinion on the merits 18

(d) Respondent's affirmative attack upon the decision under review 23

STATEMENT 1

TABLE OF CASES

Aetna Insurance Company vs. Boon 12

Alice State Bank vs. Houston Pacture Co. 24, 25

Amsterdam, The 58

Aquitania, The 30, 46

Chas. Warner Co. vs. Independent Pier Co. 24, 26

City of Boston, The 55

Dumper Scow, The, No. 0-21 16

Edward, The 32, 34

El Sol-Sac City 13

Erie Lighter No. 108 ..... 19, 22, 30, 45

Federal Trade Commission vs. Pacific States Paper Trade Association 24, 26

French Republic vs. Saratoga Vichy Springs Co. 24

Geo. W. Fields, The 30, 41

Great Western, The 49

Hamilton-Brown Shoe Co. vs. Wolfe Brothers & Co. 18, 24

Hartford Accident & Indemnity Co. vs. Southern Pacific Co. 20

Hoffmans, The 32, 34

Page

Hubbard vs. Tod 23, 24

Louisville & Cincinnati Packet Co., In re 30, 46, 50

Maria Martin, The 24

McGill, etc. vs. Michigan S. S. Co. 12, 15

Milwaukee, etc., Railroad Co. vs. Kellogg 12

Monongahela River Consol. Coal etc. Co. vs. Hurst 49

Montana Mining & Milling Co. vs. St. Louis Mining & Milling Co. 24, 25

Norwich & N. Y. Transportation Co. vs. Wright 21, 47

Old Dominion S. S. Co., In re 58

Parsons vs. Empire Transportation Company 14

Providence & N. Y. S. S. Co. vs. Hill Manufacturing Co. 19, 21

Providence vs. Boston S. S. Co. 36

Quinlan vs. Pew 36

Republic of France vs. French Overseas Corporation 17, 24

Richardson vs. Harmon 29, 36

S. A. McCaulley, The 36

Salmon King, The 30, 59

San Pedro, The 56

Scotland, The 49

Ship Owners' & Merchants' Tug Boat Co. vs. Hammond Lumber Co. 30, 40

Starin, In re 36

Steele vs. Drummond 24

Strong vs. Holmes 30, 42, 61

T. W. Wellington, The 30, 40

Tolchester, The 58

Tug No. 16, The 30, 42

Page

U. S. vs. Carver 18

Webster Electric Co. vs. Splitdorf Electrical Co. 24

Weisshaar vs. Kimball S. S. Co. 14

White vs. Island Transportation Co. 29, 32

TEXT WRITERS AND RULES

Benedict on Admiralty, 5th Ed.

Sec. 480 52

Sec. 489 51

Sec. 510 54

General Admiral Rules

Sec. 51 54

Sec. 53 63

Sec. 57 43

RESPONDENT'S CASES DISCUSSED

Carlisle Packing Co. vs. Sandanger 28, 31

Delaware River Ferry Co. vs. Amos 32

Erie Lighter No. 108 45

Eureka, The 29, 32

Lotta, The 29, 32

Rosa, The 29, 32

In the Supreme Court United States

No. 617

October Term, 1929

AXEL LANGNES, Owner of the Diesel Halibut Vessel, "ALOHA," Her Engines, etc.,

Petitioner,

vs.

WINFIELD A. GREEN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Reply Brief of Petitioner, Axel Langnes

STATEMENT

Two statements made in respondent's answer brief under the heading "Statement of Facts," being erroneous and material, are here corrected.

It is stated in the 6th and 7th and 13th to 18th lines, page 6, in what respondent submits as the substance of petitioner's testimony, as follows:

"While he was hauling in the ground line, one of the hooks caught *in the side of the vessel* * * * "* * * after the accident the sheet iron plate was extended to cover the backstay irons which were along the side of the vessel in the vicinity of the crooler to *keep the hooks from catching on them when the ground-line was hauled in.*"

There is no such testimony as this by the petitioner anywhere in the record.

The petitioner has not yet testified as to what fouled the hook in question and caused it to fly inboard. And he did not testify that the sheet iron was extended on the vessel to keep the hooks from catching on the chain plates or "back stay irons," as they are referred to. His testimony on this point was as follows:

"Q. Now, what is the purpose of that plate? Why did you put it on the side of the vessel?

A. It is to eliminate the hooks, and protect the vessel.

Q. That is to keep *a* hooks from catching on the backstay lines?

A. No, sir.

Q. Isn't that why you put it on?

A. No.

Q. What did the hooks catch in?

A. They catch in the soft wood.

Q. They will catch in the crevices where the iron is up against the wood, don't they?

A. I don't get what you mean.

Q. Here is the iron (indicating). That is not covered with zinc?

A. It is placed on top of the wood.

Q. That leaves a crack between the iron and the wood?

A. No.

Q. Don't the hooks catch in that?

A. It don't leave a crack.

Q. It leaves something, don't it, where the iron joins the wood?

A. It catches right flush up against the stay.

Q. It leaves the corners sticking up?

A. No, the corners are rounded.

Q. Why did you put zinc over the iron?

A. For no material purpose, except merely the reason this sheet iron was extending up to the second chain plate (R. 61-62).

The only testimony with reference to the catching of this hook was by the respondent, and he testified as follows:

"Q. Go ahead and tell the court what happened?

A. Well, this hook catches in this iron; you can not see when it is caught; you do not know until the strain comes on it; you have very little slack, or none at all; and you don't have much time. In this case it is possible that by jump-

ing to the lever, going toward this thing that was going to hit me that I might have—* * *

Q. What actually happened, tell us what happened, and not what you thought.

A. Well, this hook jumped back and hit me right here in the eyeball. * * *" (R. 77-78).

And on cross examination, the respondent further testified:

"Q. In all of the time that you have been engaged in fishing you have been accustomed to hooks catching in various places about the ship while being pulled in.

A. They catch in different places, yes (R. 90-91).

* * *

Q. Where were you standing when the hook first caught?

A. About in here (indicating), walking back and forth between the winch and here, and I was clear out, I think I was standing about here: I seen it coming, and I stepped over here and hoped it would go by me, because I guessed, when they caught, that is the only place where they caught (R. 92-93).

THE COURT: How frequently did these hooks catch?

A. Well, I could not say that.

THE COURT: Often, or just occasionally?

A. Well, whenever the line was hauling in, occasionally, the hooks caught, as the line was coming in, whenever it did not turn on the roller; quite often.

Q. You were the only man who was standing between the winch and the water?

A. Yes.

Q. And at the time you were out there handling the groundline and the fish?

A. Yes; handling the line and the fish.

Q. That is, you were tending the ground-line?

A. Yes.

Q. Was this winch power driven?

A. Yes; this winch was power driven.

Q. Where is it controlled?

A. It is controlled by levers.

Q. Yes.

A. The lever we used is right here (indicating on the photograph).

Q. That shows in that photograph; that is this lever (indicating).

A. Yes.

Q. Is there any other lever that controls it?

A. Yes, there were two other levers. There was one over here further that worked down against the forecastle-head.

Q. I just asked you where they were located.

A. On the girder, the one against the forecastle.

Q. So there were three different locations form which the winch was controlled?

A. Yes.

Q. And these controls were used to stop and start it?

A. Yes.

Q. Who was doinng the starting and stopping of the winch as you tended the line?

A. I was.

Q. Was that a part of your duty?

A. Yes.

Q. You were supposed to control that?

A. Yes.

Q. You did not stop the winch on the occasion this hook caught?

A. No; I would not go towards it. I never did.

Q. Did you make an effort to stop it over here by the rail?

A. No, I did not.

Q. Did you make an effort to stop it over here by the winch?

A. No sir.

Q. Did you make an effort to stop it over by the wheel-house?

A. I could not get over there. It was utterly impossible for me to get to that lever.

Q. In your experience on board this ship, Mr. Green, did you customarily allow hooks to be drawn out when they caught here and there on the vessel?

A. Yes, if they catch, I always let them tear out.

Q. Allow the power to pull them out?

A. Yes; that is right.

Q. Did you ever have any of the hooks catch in your clothing tending the ground-line?

A. Yes, I have had that happen.

Q. Have you ever had a hook catch on the deck tending ground-line?

A. Yes, I have.

Q. Did you ever have two hooks catch together coming in on the ground-line?

A. Yes, I have. (R. 93-95.)

* * *

Q. How many times have you attended ground-line or seen men attending ground-line?

A. That would be impossible for me to answer.

Q. Well, many, many times over a period of years?

A. Yes.

Q. And during that time you have seen hooks catch many times, in many places on the ship?

A. I have seen them catch several times.

Q. And it was your duty, was it not, when the hooks caught any plaace about the ship, or in your clothing, or wherever they could catch, to stop your winch and clear them, was it not?

A. If I had time, which I done.

Q. That was your duty?

A. If I had the time.

Q. That was a part of your duty?

A. Had I done it at this time—

Q. That was part of your duty?

A. Yes.

Q. And you understood it as such.

A. Yes; but you cannot say so absolutely.

Q. Now, you say these hooks caught several times in this chain plate?

A. Yes.

Q. Were you standing in the same position at the time you were hurt when they caught there?

A. Yes.

Q. That is, you were standing back a few feet from the rail?

A. Yes; working there, and walking back and forth.

Q. As a matter of fact, if you were standing even up against the rail, you could see the chain plate from the deck, can you; but if you were back a few feet from the rail, you cannot see any part of the chain plate?

A. No, only just the top part.

Q. So, when you told the court this caught on the chain plate on this particular occasion, you are assuming that it caught there?

A. That is the only place I know of that it could have caught on.

Q. You just assume it caught there because that is the only place you think it could have caught; is that correct?

A. Well, yes." (R. 96-97.)

This is the actual evidence in the record as to how the accident happened, and conclusively establishes the further inaccuracy of the statement found in respondent's brief, beginning in line 9 on page 8 as follows:

"A hook caught on the side of the vessel in the direction of the back stay irons * * *"

The remaining members of the crew of this vessel called by the respondent as his own witnesses verified the fact that hooks customarily and commonly caught upon any and all parts of vessels when the same operation was taking place as that during which the respondent was injured.

The witness, Jacob Peterson, testified as follows:

"Q. Did you have any trouble with hooks catching on the iron while you were on board?

A. They catch on all boats." (R. 106-107.)

The witness, Ed Bralen, testified as follows:

"Q. In your experience in handling these lines on board these vessels you say the hooks frequently catch in various parts of the ship, and you have stopped the winch and disengaged them?

A. Yes. (R. 118-119.)

* * *

Q. Then when a hook catches, you take the trouble to manipulate the lever instead of getting out of the way of the hook?

A. Naturally.

Q. Does everybody do that, do you know?

A. Well, I could not say as to that. Everybody does that if a person is playing safe. * * *

Q. Now, you say if there are dents in the zinc where there are nails, the hooks will catch in the dents?

A. Yes." (R. 121.)

The witness, Severine Holmess, testified as follows:

"Q. In your experience in tending ground-lines, was it a frequent occurrence, or an occasional occurrence that hooks would catch about the vessel in various places?

A. Oh, yes. They can catch mostly on anything. You might miss a fish; take fish fifty or sixty pounds, and you sometimes may have a fish, and you miss it. You get the roller, and then the chance you have to catch the hook; why, the hook might go into the sheet iron, or any place.

Q. Do these hooks on these gangions ever catch on anything when you are tending ground-line, and when it is being pulled in by the winch?

A. Yes. You drop them on the deck; and you can see where the deck is all chewed up; they will catch any place where it is rough wood, they will catch.

Q. Have you ever seen them catch on sheet iron?

A. Not except there was a hole or a dent from a nail.

Q. They will catch then, will they?

A. Yes.

* * *

THE COURT: How often did that occur. How often did the hooks catch?

A. Oh, they may catch many times a day on the sheet iron.

Q. Is that true of all vessels you have been on?

A. Well, I ain't been no place where—I ain't been on any vessels where they don't catch some place on the vessels." (R. 128-129.)

The witness, Axel Edwards, testified as follows:

"Q. Have you ever had any experience with hooks catching on various parts of the vessel?

A. Yes.

Q. Would you say that was a common occurrence?

A. Yes.

Q. In your experience?

A. In my experience.

Q. What would you do when they caught?

A. Either stop the winch myself, or have someone else stop it.

Q. Then you can stop it?

A. Yes.

Q. Disengage the hooks and untangle them?

A. Yes." (R. 136-137.)

ARGUMENT

From the foregoing undisputed evidence it is clear that no part of the petitioner's vessel was defective, and equally clear that neither the vessel nor any of her equipment had any proximate connection with the accident, as a *contributing cause.*

In the face of actual facts, the fictitious and unfounded allegations of the claimant and respondent in the pleadings become wholly unimportant for any purpose.

In deciding the case of *Aetna Insurance Company vs. Boon*, 95 U. S. 117, 130, 24 L. E. 395, this Court had occasion to state:

> "The proximate cause is the efficient cause, the one that necessarily sets the other causes in operation. The causes that are merely incidental and are instruments of a superior or controlling agency are not the proximate causes and the responsible ones, though they may be nearer in time to the result."

Again in the case of *Milwaukee, etc. Railway Co. vs. Kellogg*, 94 U. S. 469, 475, 24 L. E. 256, 259, the court said:

> "Did the facts constitute a continuous succession of events, so linked together as to make a natural whole, or was there some new and independent cause intervening between the wrong and the injury? It is admitted that the rule is difficult of application. But it is generally held that, in order to warrant a finding that negligence, or an act not amounting to wanton wrong, is the proximate cause of an injury, it must appear that the injury was the natural and probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances."

McGill etc. vs. Michigan S. S. Co., 144 Fed. 788, 792.

This rule is also aptly stated by Judge Woolsey in the District Court for the Southern District of New York in the case of *El Sol-Sac City,* 1930 A. M. C. 2015, 2020, decided November 3, 1930.

> "To preclude limitation on the ground of privity or knowledge, it is not, in my opinion, sufficient merely to prove that there was a failure in equipment, inspection or personnel to which the ship owner was privy, or of which he had knowledge. It must be shown that the fault in equipment, inspection or personnel actually contributed to the accident in respect of which the ship owner seeks limitation.
>
> "This is a practical world, and an omission to which a ship owner is privy but which has not any causal connection with the damage for which claim was made is venial in the eyes of the law. *Thessaloniki,* 267 Fed. 67, 70 (2 C. C. A.)."

We believe it clear that the accident to claimant and respondent did not happen with the privity or knowledge of the petitioner within the meaning of the Limitation of Liability Statute. The evidence admits of no other conclusion, the trial court so expressly found and decreed (R. 139-152), and the circuit court of appeals did not disturb this finding (R. 174-186).

No negligence or fault upon the part of any one, other than the claimant and respondent, existed in this case, as is conclusively established by all of the

evidence, being principally that of the claimant and respondent himself and his witnesses. There being no negligence of the petitioner, he cannot under any conceivable theory be charged with knowledge or privity within the meaning of the Limitation of Liability Statute, and the only court which has passed upon the question of the actual existence or absence of negligence, i. e., the District Court, so found.

The respondent and the Honorable Circuit Court of Appeals cite the cases of *Weisshaar vs. Kimball S. S. Co.*, 128 Fed. 397 (9 C. C. A.), and *Parsons vs. Empire Transportation Company*, 111 Fed. 202 (9 C. C. A), in support of the contention which they make to the effect that, if privity and knowledge upon the part of a petitioner exist, *the entire limitation proceeding must be dismissed.*

We do not believe these cases, and especially the *Parsons vs. Empire Transportation* case, to be controlling authorities to that effect, and they certainly are not in point with the case at bar, for there privity and knowledge upon the part of the petitioning owners were clearly established and decreed by the lower courts, as well as the Appellate Court, the contrary being true in the instant case. Furthermore, in deciding the *Weisshaar* case, the court does not discuss the question of whether the denial of the right

to limit the liability necessitated, or did not necessitate, the dismissal of the proceeding below, but in one brief sentence at the conclusion of its decision, remanded the case, with instructions that the proceedings be dismissed, and the claimant allowed to prosecute a State Court action.

The case of *Parsons vs. Empire Transportation Company* (supra) is similarly distinguishable from the case at bar in that knowledge and privity were found and affirmed, and, furthermore, the Appellate Court did not necessarily, as we read the decision, hold that the limitation proceeding should be dismissed, for there the court merely held that "The judgment is reversed, with costs to the appellants, and with directions to deny the petition for limitation of liability," the lower court apparently being left free, after denying limitation, to decree full recovery to the claimant against the petitioner.

The further decisions of this same Circuit Court of Appeals bear out that the petitioner's construction of this holding is probably correct, for in the later case of *McGill vs. Michigan S. S. Co.*, 144 Fed. 788 at p. 792, privity and knowledge of the owner were also found, but the court concludes its decision as follows:

> "The limitation of its liability must be denied. The decree is reversed as to the appellant, and the cause is remanded for further proceedings not inconsistent with the foregoing opinion."

Although limitation was denied, the proceeding was not dismissed, but remanded for further proceedings, and since this case has been cited as frequently and with as uniform approval as have both the *Weisshaar* and the *Parsons* cases above mentioned, we believe it clear that the respondent's theory of the latter of the two last mentioned cases is erroneous in fact, as well as in theory.

The most recent case which the writer finds on this point is the case of *Dumper Scow No.* 0-21, 1930 A. M. C. 1530, decided in the United States District Court for the Eastern District of New York, July 9th, 1930, by Judge Galston, subsequent to the filing of petitioner's brief in support of his petition in this case. There knowledge and privity of the owner of the scow were found and limitation was denied, but notwithstanding that the decision of the Circuit Court of Appeals, which is here under discussion, was relied upon as an authority, the court held:

> "There remains for consideration the question of whether the claimant may proceed with his state court action. He desires so to do. On the

other hand, the petitioner contends that the whole matter is now before the court. Both parties cite *Aloha,* 1929, A. M. C. 1942, 35 Fed. 2nd, 447, but a construction of the authorities relied upon would be academic, because claimant's answer seeks not only dismissal of the petition but also to have the petitioner held liable for the loss and damage caused by the accident and prays that a decree may be entered herein for the claimant's damages in full. Indeed he sets forth claimant's claim in full.

"Accordingly, it would be improper to vacate the stay of the state court action. The matter will be referred to a Commissioner to ascertain the amount of claimant's damages."

It is submitted that this point is disposed of adversely to the ruling of the Circuit Court of Appeals under discussion, by the further authorities cited on pages 24, 25, 26 and 27 of petitioner's brief in support of its petition for writ of certiorari, and petitioner here desires to submit an additional decision of this court in support of his petition, being the case of *Republic of France vs. French Overseas Corp.,* 227 U. S. 323, 331, 72 L. E. 901, 904, decided in May, 1928. Other suits had been enjoined in the limitation proceedings, and the District Court and the Circuit Court of Appeals denied both exoneration from and limitation of liability, but, nevertheless, the proceeding was not dismissed, and the cargo owner, there

the petitioner, was allowed recovery without limitation, this court there holding, viz.:

> "But for all damages legally attributable to the breach of warranty of seaworthiness, petitioners may recover, and the disposal of the case by the Circuit Court of Appeals on this basis is affirmed."

On page 23 of his brief, respondent makes the surprising contention that the *Weisshaar and Parsons cases* (supra) have been passed upon by this court with approval solely by reason of the fact that certiorari was denied in each case.

The rule is well established that the denial of certiorari has not the effect of an affirmance and imports no approval or opinion on the merits.

This court has frequently passed upon this point, the leading case being *Hamilton-Brown Shoe Company vs. Wolfe Brothers & Co.*, 240 U. S. 251, 258, 60 L. E. 629, 634, 36 Sup. Ct. Rep. 269, the court there observing:

> "It is, of course, sufficiently evident that the refusal of an application for this extraordinary writ (writ of certiorari) is in no case equivalent to an affirmance of the decree that is sought to be reviewed."

The case of *U. S. vs. Carver*, 260 U. S. 482, 490, 67 L. E. 361, 364, 43 Sup. Ct. Rep. 181, is to the same effect, the court there holding:

> "The denial of a writ of certiorari imports no expression of opinion upon the merits of the case as the bar has been told many times. Therefore it is unnecessary to consider whether the libellants' argument is supported by the decisions to which they refer."

The decision in the case of *Erie Lighter No.* 108, 250 Fed. 490, cited on pages 15 and 16 of respondent's brief, to the effect that in a limitation of liability proceeding the court should first determine the question of knowledge or privity before determining whether or not any liability exists at all, does not conform to the well-established rule laid down by this court in the very cases which are cited by District Judge Haight in support of his ruling. As we read these authorities, they are directly to the contrary.

In the case of *Providence & N. Y. S. S. Co. vs. Hill Manufacturing Co.*, 109 U. S. 578, 27 L. E. 1038, 1044, this court held:

> "In promulgating the Rules referred to, this court expressed its deliberate judgment as to the proper mode of proceeding on the part of shipowners for the purpose of having their rights under the Act declared and settled by the definitive decree of a competent court, which should be binding on all parties interested, and protect the shipowners from being harassed by litigation in other tribunals. Unless some proceeding of this kind were adopted which should bring all the parties interested into one litigation, and all the claimants into concourse for a *pro rata* dis-

tribution of the common fund, it is manifest that in most cases the benefits of the Act could never be realized. * * * The questions to be settled by the statutory proceedings being, first, whether the ship or its owners are liable at all, if that point is contested and has not been decided; and, secondly, if liable, whether the owners are entitled to a limitation of liability, must necessarily be decided by the district court having jurisdiction of the case; and to render its decision conclusive, it must have entire control of the subject to the exclusion of other courts and jurisdictions."

Again in the case of *Hartford Accident & Indemnity Co. vs. Southern Pacific Co.*, 273 U. S. 207, 214, 215, 71 L. E. 612, 615, 47 Sup. Ct. Rep. 357, the court reviews the entire subject, and again affirms the rule laid down in the *Providence & N. Y. S. S. Co.* case, (supra):

"These decisions establish, first, that the great object of the statute was to encourage ship-building and to induce the investment of money in this branch of industry by limiting the venture of those who build the ships to the loss of the ship itself or her freight then pending, in cases of damage or wrong happening, without the privity or knowledge of the ship owner, and by the fault or neglect of the master or other persons on board; that the origin of this proceeding for limitation of liability is to be found in the general maritime law differing from the English maritime law; and that such a proceeding is entirely within the constitutional grant of power to Congress to establish courts of admiralty and mari-

time jurisdiction (*Norwich & N. Y. Transp. Co. vs. Wright,* 13 Wall. 104, 20 L. ed. 585), that to effect the purpose of the statute, Admiralty Rules Nos. 54, 55, 56 and 57 were adopted by which the owner may institute a proceeding in a United States district court in admiralty against one claiming damages for the loss in which he may deny any liability for himself or his vessel, but may ask that if the vessel is found at fault his liability as owner shall be limited to the value of the vessel as appraised after the occurrence of the loss and the pending freight for the voyage; that these damages shall include damages to goods on board, second, damages by collision to other vessels and their cargoes, and, third, any other damage or forfeiture done or incurred; that all others having similar claims against the vessel and the owner may be brought into concourse in the proceeding by monition and enjoined from suing the owner and vessel on such claims in any other court; that the proceeding is equitable in its nature, and is to be likened to a bill to enjoin multiplicity of suits (*Providence & N. Y. S. S. Co. vs. Hill Mfg. Co.,* 109 U. S. 578, 27 L. ed. 1038, E Sup. Ct. Rep. 379, 617); that by stipulation after appraisement the vessel and freight may be released, and the stipulation be substituted therefor, that on reference to a commissioner and the coming in of his report, it shall be determined, *first,* whether the owner and his vessel are liable at all; *second,* whether the owner may avoid all liability except that of the vessel and pending freight; *third,* what the amount of the just claims are, and *fourth,* how the fund in court should be divided between the claimants. The cases show that the court may enter judgment *in personam* against the owner as well as judgment *in rem* against the *res* or the

substituted fund (*Place vs. Norwich & N. Y. Transp. Co.*, 118 U. S. 468, 503, 30 L. ed. 134, 147, 6 Sup. Ct. Rep. 1150) that the fund is to be distributed to all established claims to share in the fund to which admiralty does not deny existence, whether they be liens in admiralty or not (*The Hamilton Old Dominion S. S. Co. vs. Gilmore*, 207 U. S. 398, 406, 52 L. ed. 264, 270, 28 Sup. Ct. Rep. 133), and that they may include damages from a collision, from personal injuries (*Butler vs. Boston & S. S. S. Co.*, 130 U. S. 527, 32 L. ed. 1017, 9 Sup. Ct. Rep. 612), or for wrongful death if arising under a law of Congress, a state of the Union or a foreign state, which is applicable to the owner and the vessel (*La Bourgogne — Deslions vs. La Campagnie Generale Transatlantique*, 210 U. S. 95, 138, 52 L. ed. 979, 993, 28 Sup. Ct. Rep. 664).

"It is quite evident from these cases that this court has by its rules and decisions given the statute a very broad and equitable construction for the purpose of carrying out its purpose and for facilitating a settlement of the whole controversy over such losses as are comprehended within it, and that all the ease with which rights can be adjusted in equity is intended to be given to the proceeding."

With all due respect to the decision of District Judge Haight on this point, in the case of *Erie Lighter No.* 108 (supra), it is submitted that these controlling decisions of this court have not been overruled, and Judge Haight's decision should be classified as improvident and erroneous, and that the de-

cision of the Circuit Court of Appeals in the instant case must fall by the same test.

RESPONDENT'S ATTACK UPON THE DECISION UNDER REVIEW

We come next to a discussion of Sub-Division II, referred to at the bottom of page 11 of respondent's brief, and discussed, beginning on page 24 thereof, which is designated by respondent as follows:

> "When a seaman sues for personal injuries in the State Court and there is only one possible claimant and one owner, the advantage of the Limited Liability Act must be obtained by proper pleading in that Court and not by filing a petition in the United States District Court."

In the first place, it will be noted that this point was decided adversely to respondent's contention in the trial court, and by the decision of the Circuit Court of Appeals here under review. Respondent has filed no petition, or cross-petition for certiorari in this court. Therefore, it is submitted that this question is not properly before this court for consideration.

Petitioner bases this contention upon the following decisions of this court:

> *Hubbard vs. Tod*, 171 U. S. 474, 494, 43 L. E. 246, 256, 19 Sup. Ct. Rep. 14;

Alice State Bank vs. Houston Pasture Co., 247 U. S. 240, 242, 62 L. E. 1096, 1098, 38 Sup. Ct. Rep. 496;

Montana Mining Co. vs. St. Louis Mining & Milling Co., 186 U. S. 24, 31, 46 L. E. 1039, 1041, 22 Sup. Ct. Rep. 744;

Federal Trade Commission vs. Pacific States Paper Trade Association, 273 U. S. 52, 57, 71 L. E. 534, 539, 47 Sup. Ct. Rep. 255;

Republic of France vs. French Overseas Corp., 277 U. S. 232, 331, 72 L. E. 901, 904;

French Republic vs. Saratoga Vichy Springs Co., 191 U. S. 427, 440, 48 L. E. 247, 253, 24 Sup. Ct. Rep. 145.

Hamilton-Brown Shoe Co. vs. Wolfe Brothers & Co., 240 U. S. 251, 257, 60 L. E. 629, 633, 36 Sup. Ct. Rep. 269;

Charles Warner Co. vs. Independent Pier Co., 278 U. S. 85, 91, 73 L. E. 195, 198, 49 Sup. Ct. Rep. 45;
Steele vs. Drummond, 275 U. S. 199, 203, 72 L. E. 238, 239, 48 Sup. Ct. Rep. 53;

Webster Electric Co. vs. Splitdorf Electrical Co., 264 U. S. 463, 464, 68 L. E. 792, 793, 44 Sup. Ct. Rep. 342;

The Maria Martin, 12 Wall. 31, 40, 20 L. E. 251, 252.

In the case of *Hubbard vs. Tod* (supra), it was held:

"This case belongs to the class of cases in which the decree of the circuit court of appeals is made final by the statute, and having been

brought up by certiorari on the application of petitioner below, is pending before us as if on his appeal.

"And as respondents did not apply for certiorari, we shall confine our consideration of the case to the examination of errors assigned by petitioner."

In the case of *Alice State Bank vs. Houston Pasture Co.* (supra), it was held:

"A plausible argument can be made that the working of the Act of 1870 and other pertinent facts and statutes which we do not recite was to give to the land warrant the validity and effect that it would have had if lawfully executed in General Houston's life. But as that is not the ground upon which the writ of certiorari was asked or granted, we confine our discussion to the matter relied upon in asking the intervention of this court. (*Hubbard vs. Tod*, 171 U. S. 474, 494, 43 L. Ed. 246, 256, 19 Sup. Ct. Rep. 14)."

In the case of *Montana Mining Company vs. St. Louis Mining & Milling Co.* (supra) it was held:

"By Rule 22 of this court, appeals and cross-appeals are heard together, and the practice is the same as under writs and cross-writs of error. Where there are cross-appeals or cross-writs of error in the Circuit Courts of Appeal in cases in which the decrees or judgments are made final in that court by statute, and the cases are brought here on certiorari, we consider only the errors assigned by petitioner, unless a cross-writ of certiorari is applied for and allowed." (*Hubbard vs. Tod*, 171 U. S. 474, 494, 43 L. E. 246, 256, 19 Sup. Ct. Rep. 14.)"

In the case of *Federal Trade Commission vs. Pacific States Paper Trade Association* (supra) it was held:

> "Respondents, notwithstanding their failure to petition for certiorari, now ask for reversal of that part of the decree which leaves in force part of paragraph (e) and paragraphs (g) and (h). This court has the same power and authority as if the case had been carried here by appeal or writ of error.
>
> "A party who has not sought review by appeal or writ of error will not be heard in an appellate court to question the correctness of the decree of the lower court. This is so well settled that citation is not necessary. The respondents are not entitled as of right to have that part of the decree reviewed. *Hubbard vs. Tod*, 171 U. S. 474, 494, 43 L. E. 246, 253, 19 Sup. Ct. Rep. 14; *French Republic vs. Saratoga Vichy Springs Co.*, 191 U. S. 427, 440, 48 L. E. 247, 253, 24 Sup. Ct. Rep. 145; *Alice State Bank vs. Houston Pasture Co.*, 247 U. S. 240, 242, 62 L. E. 1096, 1098, 38 Sup. Ct. Rep. 496; *C. F. Hamilton-Brown Shoe Co. vs. Wolfe Brothers & Co.*, 240 U. S. 251, 257, 60 L. E. 629, 633, 36 Sup. Ct. Rep. 269.

In the case of *Charles Warner Co. vs. Independent Pier Co.* (supra), it was held:

> "Objections to the decree below were offered by counsel for respondents in briefs and arguments here. But no application for certiorari was made in their behalf and we confine our consideration to errors assigned by the petitioner. *Steele vs. Drummond*, 275 U. S. 199, 203, 72 L. E. 238,

239, 48 Sup. Ct. Rep. 53; *Federal Trade Commission vs. Pacific States Paper Association,* 273 U. S. 52, 71 L. E. 534, 539, 47 Sup. Ct. Rep. 255; *Webster Electric Co. vs. Splitdorf Electrical Co.,* 264 U. S. 463 464, 68 L. E. 792, 793, 44 Sup. Court Rep. 342; *Alice State Bank vs. Houston Pasture Co.,* 247 U. S. 240, 242, 62 L. 1096, 1098, 38 Sup. Ct. Rep. 496; *Hubbard vs. Tod,* 171 U. S. 474, 494, 43 L. E. 246, 256, 19 Sup. Ct. Rep. 14; *The Maria Martin,* 12 Wall. 31, 40, 20 L. E. 251, 252."

Based upon the foregoing authorities, we conclude that the argument raised by respondent under Sub-Division II of his brief will not be considered, but in the event of its consideration, petitioner submits the following argument in reply.

The question may be briefly stated, in substance, as follows:

Where a seaman, injured at sea, institutes a state court action under Section 33 of the Merchant Marine Act of 1920, but one claimant and one owner appearing, *must* the owner, in order to limit his liability, attempt to do so in the state court action, or may he institute an independent proceeding in a court of admiralty to limit liability and enjoin the state court proceeding?

In arguing this question respondent is primarily confused and thrown into error by his inability, or

failure, to distinguish between the words "must" and "may."

The answer to the question is:

The owner may attempt to secure limitation of his liability in the state court action, but he is not *required* to do so, and he may unquestionably elect to institute a proceeding to limit his liability in the admiralty court and enjoin the state court proceeding.

Simply stated, respondent's contention is that a single claim for personal injuries, sustained by a seaman on board ship, does not constitute jurisdictional grounds for the owner of said vessel to limit its liability against said claim for said injuries.

The petition in this case does not disclose, as appellant presupposes, that only one possible claim is involved, but even though it did, respondent's position on this point is wholly untenable, the precise question having been many years ago definitely and authoritatively settled and disposed of by this court contrary to respondent's contention.

The court will, of course, observe that the cases which appellant cites in his brief, with the exception of the *Carlisle Packing Company Case*, which case, neither by application nor analogy, has the slightest bearing upon the present question under consideration, all

antidate the case of *Richardson vs. Harmon*, 222 U. S. 96, 56 Law Ed. 110, which was decided on *November* 20, 1911, and the case of *White vs. Island Transportation Company*, 233 U. S. 346, 58 Law Ed. 993, which was decided by thi scourt on April 13, 1914.

In the two last mentioned cases, to which we shall hereafter refer in greater detail, and in the *White vs. Island Transportation Company* case particularly, this court laid down the definite and detailed rule completely disapproving the theory on which respondent relies.

Since the dates of said last mentioned decisions, the authorities, *without exception,* have held that a single claim, whether for personal injuries or otherwise, is sufficient to entitle a ship owner, as a matter of right, to maintain the proceedings which petitioner has herein instituted. Further than this, Benedict, in his work on Admiralty, 5th Edition, likewise states the law to be contrary to respondents contention, and cites, among his authorities in support of such statement, *that the cases of The Rosa,* 53 Fed. 132; *The Eureka No.* 32, 108 Fed. 672, and *The Lotta*, 150 Fed. 219, *have long since been overruled.* Bendict's text, Sec. 494, at page 593, reads as follows:

> "It is not a jurisdictionaal requirement that there be more than one claim; a single claim will authorize a limitation proceeding."

In support of this statement, Benedict cites many authorities upon which we shall hereafter touch, chief among them being *White vs. Island Transportation Company*, supra.

Since the decision in the last mentioned case, so far as the citators disclose, that decision has been cited only with approval and followed, among others, by the following cases:

Ship Owners' & Merchants' Tug Boat Co. vs. Hammond Lumber Co. (9th C. C. A.), decided November 17, 1914, 218 Fed. 161;

In re Louisville v Cincinnati Packet Co., decided April 3, 1915, 223 Fed. 185;

The T. W. Wellington, decided September 5, 1916, 235 Fed. 728;

The George W. Fields, decided April 12, 1915, 237 Fed. 403;

The Tug No. 16, decided November 14, 1916 (expressly disapproving The Rosa), 237 Fed. 405;

Strong vs. Holmes (9th C. C. A.), decided December 4, 1916, 238 Fed. 554;

The Erie Lighter No. 108, decided April 16, 1918, 250 Fed. 490;

The Aquitania, decided June 21, 1926 (citing White vs. Island Transportation Company with approval), 14 Fed. (2nd) 455;

The Salmon King, decided February 9, 1928, 1928 A. M. C. 464.

So far as the writer's search discloses, this court has never, directly or indirectly, overruled, criticized, disapproved or modified its decision establishing the rule in *White vs. Island Transportation Company*, supra.

The case of *Carlisle Packing Company vs. Sandanger*, 259 U. S. 255, 66 L. ed. 927, which respondent cites in his brief and chiefly relies upon, does not even touch the point at issue and no mention is made in that case of the decision in *White vs. Island Transportation Company*, supra, or any one of the numerous subsequent district court and circuit court decisions, which have expressly followed and enlarged upon the principle therein laid down.

We may further analyze appellant's argument as follows:

> *Point* 1. A case where there is a single claim and a single owner will not justify a petition for limitation of liability where suit in a common law court has been instituted on the claim.
>
> Point 2. Appellant in the case at bar, being a seamon, the recent passage of the Jones Merchant Marine Act, 1920, has operated to deprive the owner to bring an independent proceeding to limit its liability and to enjoin an independent suit on such claim.

Both of these points are contrary to the definite and firmly established rule pronounced by this court,

Point 1, being squarely covered by the case of *White vs. Island Transportation Company*, supra, and Point 2, having been definitely decided against appellant in the recent case of *The Edward*, 1925 A. M. C. 33, 266 U. S. 355, 69 Law ed. 324.

In an effort to support these two obsolete contentons by authority, respondent adopts the procedure of referring back to some early cases, *namely, The Lotta, Delaware River Ferry Company vs. Amos, The Eureka*, and *The Rosa*. In those earlier cases, all of which, as we have pointed out, antidate the decision of this court in the case of *White Island Transportation Company*, the courts actually hold as respondent contends. These authorities, it will be noted, however, merely take one side of the question as it existed in their day, while other decisions, notably that of *The Hoffmans*, decided May 24, 1909, 171 Fed. 455, hold to the opposite theory, as the weight of authority. All this conflict was laid at rest however, in *White vs. Island Transportation Company*, where reference is made to the then existing conflict of authority on the point in question.

Respondent attempts to revive the theory of these earlier cases which he cites, by the unsound argument that mere mention of them by this court, in the

Carlisle Packing Company vs. Sandanger case, in connection with the point that an owner, if so elected and made timely application therefor, might if it chose, claim the advantage of the limited liability statute by proper pleading in an action at law, and reference to two of these earlier overruled cases for elaboration on that point, operates as an affirmance of all that they contain and sweeps away the *Island Transportation Company* case and all recent authority by inference alone. The court in the *Carlisle Packing Company* case, was not considering, and did not decide, whether the owners had not the right to institute a proceeding in admiralty to obtain advantage of the statutory right given to it by the limitation of liability law, and its reference to two of these earlier cases did not, of course, operate to affirm or approve other points in those cases which it had previously and expressly disapproved in the Island Transportation Company case. The complete paragraph of the decision in the *Carlisle Packing Company* case, of which respondent quotes only a misleading part, reads as follows:

> "Petitioner asked an instruction that Sec. 4283 of the Revised Statute (Comj. Stat., Sec. 8021, 6 Fed. Stat. Anno. 2d ed. p. 336) applied, and that, under it, the verdict could not exceed the value of the vessel. In a state court, when there is only one possible claimant and one owner, the advan-

> tage of this section may be obtained by proper pleading. *The Lotta*, 150 Fed. 219, 222; *Delaware River Ferry Co. vs. Amos*, 179 Fed. 756. Here the privilege was not set up or claimed in the answer, and it could not be first presented upon request for a charge to the jury."

In *The Edward*, supra, this court likewise squarely repudiates respondent's second contention, there holding, in no uncertain terms, that Section 33 of the Jones Merchant Marine Act did not overrule, modify or take from the owner its statutory right to limit its liability by an independent admiralty action, as in the case at bar.

For the convenience of the court, we herewith set forth a brief mention of the *majority* rule prior to the case of *White vs Island Transportation Company* in April of 1914, followed by a brief reference to that decision, and then the modern unvarying confirmation which that rule has received at the hands of numerous courts.

In the case of *The Hoffmans*, 171 Fed. 455, the court, after reviewing the principal existing decisions, held as follows:

> "If there is more than one forum in which shipowners can obtain relief under the statute, it would seem that the right of selecting the court rests with them. If they wish to proceed in an affirmative manner, they cannot do

so except in the District Courts, and they must use their machinery to secure full protection. * *

"In a case of a single claim, if there is the merest possibility of there beirg further claims, it would obviously be gross neglect on the part of a shipowner to fail to resort to limited liability proceedings, unless he was satisfied to take the chance of further litigation respecting his vessel. The only way he could fully protect himself would be by availing himself of the provisions of the statutes and the rules made in furtherance of them.

"It is well settled that a shipowner can resort to the District Courts at any time before satisfaction of judgment even after the claim or claims, has been fully litigated in the state courts. The Benefactor, 103 U. S. 239, 26 L. Ed. 351. Notable instances of a final resort to the District Court for limitation, after proceedings in a state court, are: in re Starin, and the S. A. McCaulley, supra. *If vessel owners can finally resort to the District Courts to obtain the benefits of the act, it is difficult to see why they are not entitled to at the outset and it seems unjust to require them to determine in the beginning whether or not there is more than one claim.* The machinery of the court affords the only adequate method of legally determining that fact and though it may turn out that there was but one outstanding claim and there may be some incidental hardship to a claimant, that seems to be no sufficient reason for depriving a vessel owner of his statutory right.

"I conclude that a vessel owner under the circumstances involved in the present case is entitled to resort to limitation proceedings." (Italics ours.)

To the same effect are the following:

Richardson vs. Harmon, 222 U. S. 96, 56 Law. Ed. 119;

Providence vs. Boston & S. S. Co., 130 U. S. 527; 37 Law. Ed. 1017;

Quinlan vs. Pew, 5 C. C. A. 438, 56 Fed. 111;

The S. A. McCaulley, 99 Fed. 302;

In re Starin, 124 Fed. 101.

These decisions constitute the majority rule as opposed to those authorities cited by respondent, prior to April, 1914, when this court approved them and settled the point contrary to respondent's contention.

The case of *White vs. Island Transportation Company* is so squarely on all fours with that of the case at bar, in addition to being the leading case on the question at issue, that it is almost an exact counterpart of that now presented to the court, with the single exception that the claimant was a passenger rather than a seaman. In that case a passenger on the steamer "Fairhaven," plying on Puget Sound, sustained a severe personal injury by being caught or thrown by a rod extending through the deck and connecting with the paddle-wheel of the vesssel.

> "To recover for the injury she brought an action against the Island Transportation Compnay, the owner of the vessel, in the Superior

Court for King County in the state of Washington, naming $21,350.87 as her damages. The owner then filed a libel or petition in the district court of the United States for that district to secure the benefit of the statute limiting the liability of vessel owners. Rev. Stat., Secs. 4283-4285, U. S. Comp. Stat. 1901, pp. 2943, 2944; admiralty rules, 53-57, 210 U. S. 562, Digest Sup. Ct. 1908, Vol. 6, p. 33 Appx., 29 Sup. Ct. Rep. XLV. The petition referred to the action in the state court and alleged that the damage claimant was insisting, that her injury was caused by the 'carelessness and negligence of the employees' of the owner in handling the vessel, in not furnishing the passengers with safe and proper facilities, and in not informing them of dangerous conditions. It also alleged that the claimant was injured through her own negligence, without any fault in the construction, equipment, management, control, or care of the vessel, and especially without the privity or knowledge of the owner."

The petition also prayed for the issuance of a restraining order, restraining the prosecution of the action in the state court. Thereupon:

"The claimant also moved to dismiss the proceeding for want of jurisdiction, upon the ground that the pleadings showed that the injury was attributable to negligence of the owner, and that the petition disclosed but one claim and laid no basis for apprehending the existence of others. The motion to dismiss was overruled, and an exception reserved * * *. This appeal followed, and a certificate was granted showing the grounds of the motion, the court's ruling, and the exception."

Thereafter, on these issues, which will be observed are almost identical with those of the case at bar, except the claimant was there a passenger rather than a seaman, the court holds as follows:

> "The objection that the court could not entertain the proceeding because the petition disclosed only one claim arising out of the injury is grounded upon the terms of Secs. 4284 and 4285 (U. S. Comp. Stat. 1901, pp. 2943, 2944), which require a pro rata distribution of the value of the vessel and freight when not sufficient to satisfy all claims, authorize proceedings to obtain the benefit of the statute, make the surrender of the vessel and freight for the benefit of claimants a sufficient compliance with the statute on the part of the owner, and declare that upon such surrender all claims and proceedings against the owner shall cease. It must be conceded that these sections, if taken alone, give color to the objection, for, with a single exception, their words apparently contemplate a plurality of claims. But to a right understanding of these sections, it is essential that they be read with Sec. 4283 (U. S. Comp. Stat. 1901, p. 2943). It contains the fundamental provision on which the others turn. It broadly declares that 'the liability . . . for any . . . damage . . . occasioned without the privity or knowledge of such owner . . . shall in no case exceed' the value of the vessel and freight. The succeeding sections are in the nature of an appendix, and relate to the proceedings by which the first is to be made effective. Therefore, they should be so construed as to bring them into correspondence with it. It was so held in *Butler vs. Boston & S. S. S. Co.*, 130 U. S. 550, 551, 1022, 9 Sup. Ct. Rep. 612,

where it became necessary to consider another difference in terms between them and it. In that case this court said, quoting from a decision of the Supreme Court of Rhode Island: 'These sections (4284 and 4285), if we look only to the letter, apply only to injuries and losses of property. The question is, therefore, whether we shall by construction bring the three sections into correspondence by confining the scope of Sec. 4283, to injuries and losses of property, or by enlarging the scope of the two other sections so as to include injuries to the person. We think it is more reasonable to suppose that the designation of losses and injuries in Secs. 4284 and 4285 (U. S. Comp. Stat. 1901, pp. 2943, 2944), is imperfect, a part being mentioned representatively for the whole, and consequently that those sections were intended to extend to injuries to the person as well as to injuries to property, than it is to suppose that Section 4283 was intended to extend only to the latter class of injuries, and was inadvertently couched in words of broader meaning.' In the lower Federal courts there has been some contrariety of opinion upon the point now being considered, but the prevailing view has been that due regard for the broad terms and dominant force of Sec. 4283 requires that Secs. 4284 and 4285 be construed as authorizing a proceeding for limitation of liability whether there be a plurality of claims or only one. *Quinlan vs. Pew*, 5 C. C. A. 438, 5 U. S. App. 382, 56 Fed. 111, 120; *The S. A. McCaulley*, 99 Fed. 302, 304; *The Hoffmans*, 171 Fed. 455, 457; *Benedict Admiralty*, 4th Ed., Sec. 533. In the recent case of *Richardson vs. Harmon*, 222 U. S. 96, 56 L. Ed. 110, 32 Sup. Ct. Rep. 27, where there was but a single claim, it was assumed by both court and counsel that plurality of claims

was not essential. We think that is the true view of the statute.

"Decree affirmed."

Since the rendition of the foregoing decision holding squarely the opposite of respondent's present contention, the following authorities have further cemented this rule:

Judge Gilbert of the Ninth Circuit Court of Appeals, in the case of *Ship Owners' & Merchants' Tug Boat Co. vs. Hammond Lb r.Co.*, 218 Fed. 161, decided November 17, 1914, remarks:

> "In the court below the motion to dismiss was based on two grounds: (1) That only one claim was made against the tugs; and (2) that the amount thereof was much less than the appraised value of the tugs, and that for those reasons there was no occasion for limitation of liability, and no reason for depriving the claimant of its common-law remedy of trial by jury. On the latter ground the motion was allowed. The decision in *White vs. Island Transportation Co.*, 233 U. S. 346, 34 Sup. Ct. 589, 58 L. Ed. 993, may be accepted as establishing the rule that the limited liability acts of Congress authorize a proceeding for limitation of liability 'whether there be a plurality of claims or only one.'"

Judge Chatfield, in the case of *The T. W. Wellington*, 235 Fed. 728, decided in the Eastern District of New York September 16, 1916, being a proceeding in admiralty for limitation of liability, wherein the owner

moved for restraining orders against claimant prosecuting its claim in a common law court, the restraining orders being granted, held in doing so:

> "It has also been held that limitation can be had where but one claim is presented. *White vs. Island Transp. Co.,* 233 U. S. 346, 34 Sup. Ct. 589, 58 L. Ed. 993; *The Benefactor vs. Mount,* 103 U. S. 239, 26 L. Ed. 351."

Judge Learned Hand, in the case of *The George W. Fields,* 237 Fed. 403, decided in the Southern District of New York, April 12, 1915:

> *"It is now settled that a single claim will support a limitation proceeding. White vs. Island Transportation Co.,* 233 U. S. 346, 34 Sup. Ct. 589, 58 L. Ed. 993. But it has been decided in the Ninth Circuit that this single claim must be greater than the value of the vessel. * * * The practical difficulty lies in knowing whether the claims actually filed are the only ones, and, if there are others, how many they are and how large. If the petition were to allege that the aggregate of all possible claims was less than the value, if the statute of limitations had run upon all claims, as suggested by Judge Chatfield in *The Defender* (D. C.), 201 Fed. 189, if the nature of the accident were such as could result by no chance in more than one claim (*Shipowners', etc., Co. vs. Hammond Lumber Co.,* 218 Fed. 161, 134 C. C. A. 575), then the petition might be open to exception, but here there is nothing of that sort. * * *
>
> "I think it clear that the petitioner should not be required at his peril to aver and prove that there are claims for more than the value of the vessel, for, if he fails, he loses his limitation,

without any assurance that there may not be others, which he may not know. If the rule has any application, it must be limited to cases where the aggregate of the claims appears beyond any question, either from the petition or elsewhere. If the affidavit may be considered on this application, it is far from making the necessary proof." (Italics ours.)

Judge Learned Hand again, in the case of *The Tug No. 16*, 237 Fed. 405, decided in the Southern District of New York, November 14, 1916:

"It has now been finally decided that a single claim is enough to sustain the petition (*White vs. Island Trans. Co.*, 233 U. S. 346, 34 Sup. Ct. 589, 58 L. Ed. 993), contrary to the early impression in this district (*The Rosa* (D. C.) 53 Fed. 134), and it may be urged that, since the limitation could be effectively enforced by a state court, where there was only a single claim, that case should be taken as holding that the petition lies, even when the single claim is less than the value of the vessel. Yet in *White vs. Island Transportation Co.*, supra, the claim was larger than the value, and all that the case necessarily decides is that the shipowner in that event has his option of forums; it need not be taken to decide that, where there is no need of any limitation at all, he may enjoin the usual common-law remedies, which are, indeed, preserved by the statute."

Judge Rudkin, speaking for the Circuit Court of Appeals, Ninth Circuit, in *Strong vs. Holmes*, 238 *Fed.* 554, decided December 4, 1916:

"Admiralty Rule 57, as amended and promulgated April 22, 1889 (130 U. S. 705, 29 Sup. Ct. XLVI), provides as follows:

"'The said libel or petition shall be filed and the said proceedings had in any District Court of the United States in which said ship or vessel may be libeled to answer to any such embezzlement, loss, destruction, damage or injury, or, if the ship or vessel be not libeled, then in the District Court for any district in which the said owner or owners may be sued in that behalf. When the said ship or vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the owner or owners, or has been commenced in a district other than that in which the said ship or vessel may be, the said proceedings may be had in the District Court of the district in which the ship or vessel may be, and where it may be subject to the control of such court for the purposes of the case as hereinbefore provided. If the ship has already been libeled and sold, the proceeds shall represent the same for the purpose of these rules. * * *

"The facts upon which the jurisdiction depends in this case are as follows: Certain piles of lumber on the steamship Alki toppled over on a voyage from the city of Seattle to Juneau, Alaska, on the 31st day of March, 1912. *A personal action was thereafter brought in the Superior Court of King County, State of Washington, against the appellant, as owner, to recover damages for the loss and injury occasioned thereby.* A judgment was recovered in that action in the sum of $21,250. Thereafter a suit was instituted on the King County judgment against the appellant in the court below, and in that suit a second judgment was recovered, upon which the appellee is now

threatening to issue an execution. It will thus be seen that the jurisdiction of the court below depended upon the question whether the suit on the King County judgment in the Alaska court was a suit in behalf of the loss or injury resulting from the toppling over of the lumber within the meaning of Rule 57. We think that it was.

"'In these provisions of the statute we have sketched in outline a scheme of laws and regulations for the benefit of the shipping interest, the value and importance of which to our maritime commerce can hardly be estimated. Nevertheless, the practical value of the law will largely depend on the manner in which it is administered. If the courts having the execution of it administer it in a spirit of fairness, with the view of giving to shipowners the full benefit of the immunities intended to be secured by it, the encouragement it will afford to commercial operations (as before stated) will be of the last importance. But if it is administered with tight and grudging hand, construing every clause most unfavorably against the ship-owner, and allowing as little as possible to operate in his favor, the law will hardly be worth the trouble of its enactment. Its value and efficiency will also be greatly diminished, if not entirely destroyed, by allowing its administration to be hampered and interfered with by various and conflicting jurisdictions.' *Providence & N. Y. S. S. Co. vs. Hill Mfg. Co.*, 109 U. S. 578, 3 Sup. Ct. 379, 385 (27 L. Ed. 1038). * * *

"It is also urged that there is only one claimant, and that the value of the vessel is greatly in excess of his claim; *but the fact that there is but one claim is immaterial. White vs. Island Transportation Co.*, 233 U. S. 346, 36 Sup. Ct. 589, 58 L. Ed. 993." (Italics ours.)

Judge Haight, in *The Erie Lighter No.* 108, 250 Fed. 409, decided in the District of New Jersey April 16, 1918:

> "This is a proceeding, instituted pursuant to Admiralty Rules 54-57 of the Supreme Court (29 Sup. Ct. XXXI, XXXII), to procure the benefits of the limitation of liability provided for in sections 4283-4289 of the Revised Statutes, as amended by the Acts of June 26, 1884, and June 19, 1886 (23 Stat. L. 57; 24 Stat. L. 80; U. S. Comp. Stat. 1916, Secs. 8021-8028). *There is but one claimant. The claim is based on personal injuries which resulted in death.* Several jurisdictional questions were disposed of when the matter was previously before the court on exceptions to the petition. The additional questions which have arisen on final hearing can be better stated after the general facts have been outlined. * * *
>
> "This is an important consideration, as a great many limited liability cases, since the decision in *White vs. Island Transp. Co.*, 233 U. S. 346, 34 Sup. Ct. 589, 58 L. Ed. 993, deal only with a single claim arising out of personal injury. * * *
>
> "Nor is there any evidence from which his privity or knowledge that there had been any neglect in respect to inspection could be inferred. It follows therefore that, if the petitioner is liable for the injuries which resulted in the decedent's death, it is entitled to limitation of its liability. * *
>
> "A permanent injunction against the claimant proceeding against the petitioner in the state courts of New Jersey or otherwise, to recover damages for the decedent's death, will be awarded the petitioner. Costs will not be allowed either party, as each has been partially successful in these proceedings." (Italics ours.)

Judge Augustus N. Hand, in the case of *Aquitania*, 14 Fed. (2nd) 456, decided in the Southern District of New York June 21, 1926, while therein holding that the petition would not lie because the value of the vessel was many times in excess of any possible claims, nevertheless affirmed the doctrine of the preceding cases:

> "If the decision of the Circuit Court of Appeals of the Ninth Circuit in *Shipowners' & Merchants' Tugboat Co. vs. Hammond Lumber Co.*, supra, is sound law, the Limitation Act, in view of the decision of the Supreme Court in *White vs. Island Transportation Co.*, 233 U. S. 346, 34 S. Ct. 589, 58 L. Ed. 993, must be primarily founded, not upon the avoidance of a multiplicity of action, but a possibility at least that the liability of the owner may exceed the value of the vessel and her pending freight. In *White vs. Island Transportation Co.*, supra, the single claim proved was greater than the value, and upon such a state of facts, the proceeding was allowed."

See also the very learned discussion by Judge Cochrane in *Re Louisville & Cincinnati Packet Company*, 223 Fed. 185, decided in the Eastern District of Kentucky, April 3, 1915, the court therein denying claimants' motion to dismiss the petition for limitation of liability upon the filing of which the state court action had been enjoined.

The contentions which respondent raises in this case are so patently untenable that it is not really

necessary to refer to decisions to illustrate their fallacy, the statutory enactment and the rules of court being sufficient to dispose of the matter.

In *Norwich & New York Transportation Co. vs. Wright* (decided in 1871), 13 Wall. 107, 20 U. S. (L. Ed.) 585, Justice Bradley laid the foundation for present Admiralty Rule 51, observing in the course of his discussion the following:

> "The Act does not state what court shall be resorted to, nor what proceedings shall be taken; but that the parties ,or any of them, may take 'the appropriate proceedings in any court, for the purpurpose of apportioning the sum of which, etc.' Now, no court is better adapted than a court of admiralty to administer precisely such relief. It happens every day that the proceeds of a vessel or other fund is brought into that court to be distributed amongst those whom it may concern. Claimants are called in by monition, to present and substantiate their respective claims, and the fund is divided and distributed according to the respective liens and rights of all the parties. Congress might have invested the Circuit Courts of the United States with the jurisdiction of such cases by bill in equity, but it did not. It is also evident that the State Courts have not the requisite jurisdiction. Unless, therefore, the District Courts themselves can administer the law, we are reduced to the dilemma of inferring that the Legislature has passed a law which is incapable of execution. This is never to be done if it can be avoided. We have no doubt that the District Courts, as courts of admiralty and maritime jurisdiction, have jurisdiction of the matter; and this

court, undoubtedly, has the power to make all needful rules and regulations for facilitating the course of proceeding."

"* * * * * *

"*The proper course of proceeding for obtaining the benefit of the Act would seem to be this:*

"When a libel for damage is filed, either against the ship *in rem* or the owners *in personam*, the latter (whether with or without an answer to the merits) *should file a proper petition* for an apportionment of the damages according to the statute and should pay into court (if the vessel or its proceeds is not already there) or give due stipulation for such sum as the court may, by proper inquiry, find to be the amount of the limited liability, or else surrender the ship and freight by assigning them to a trustee in the manner pointed out in the fourth section. *Having done this*, the ship-owner *will be entitled to a monition* against all persons to appear and intervene *pro interesse suo, and to an order restraining the prosecution of other suits. If an action should be brought in a State Court the ship owner should file a libel in admiralty, with a like surrender or deposit of the fund, and either plead the fact in bar in the State Court or procure an order from the District Court to restrain the further prosecution of the suit.* The court having jurisdiction of the case, under and by virtue of the Act of Congress, would have the right to enforce its jurisdiction and to ascertain and determine the rights of the parties. For aiding parties in this behalf, and facilitating proceedings in the District Courts, we have prepared some rules which will be announced at an early day." (Italics ours.)

See also:

The Great Western (1886), 118 U. S. 520, 30 U. S. (L Ed.) 156;

Monongahela River Consol. Coal, etc., Co. vs. Hurst (C. C. A. 6th Circuit 1912), 200 Fed. 711.

It will be noted that in the *Norwich* case, *supra*, the Court lays down the mode of procedure which petitioner has followed in this case. Thereafter, as Justice Bradley stated, the Supreme Court did promulgate the rules of procedure, it being especially directed to the court's attention that under Admiralty Rule 51, entitled "Limitation of Liability—*How Claimed*," this court has used the following mandatory language:

> "* * * and, upon compliance with such order (either an order for appraisement or surrender of the vessel), the said court *shall issue* a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage or injury, citing them to appear before the said court * * * and the said court shall also, on the application of the said *owner or owners, make an order to restrain the further prosecution* of *all* and *any suit or suits against said owner or owners in respect to any such claim or claims.*" (Italics ours.)

As was said in the case of *The Scotland*, 105 U. S. 24, 26 L Ed. 1001:

"Without adverting to the fact that these rules were not in existence until long after this litigation had been pending, we may say, once for all, that they were not intended to restrict parties claiming the benefit of the law, but to aid them. Some form of proceeding was necessary to enable shipowners to bring into concourse the various parties claiming damages against them for injuries sustained by mishaps to the ship or cargo, where they were entitled, or conceived themselves entitled, to the laws of limited responsibility, and where they were subjected to be liable to actions for damages at the suit of the parties thus injured. *The rules referred to were adopted for the purpose of formulating a proceeding that would give full protection to the shipowners in such case. They were not intended to prevent them from availing themselves of any other remedy or process which the law itself might entitle them to adopt.* (Italics ours.)

And as was said by Judge Cochran, of the Eastern District of Kentucky *in re Louisville & Cincinnati Packet Co.*, 223 Fed. 185:

"The requirement, however, is that in such contingency the libel shall be filed and the proceeding had in the District Court of any district in which the owner or owners, may be sued; *not the same court in which the suit has been brought, but in the court of admiralty for the same district.*

"* * * * *

"* * *If the vessel has been libeled the proceeding is to be had in the *same court.* If it has not been libeled, but the owner has been sued in the same district in which the vessel then is, then it is to be had in the *admiralty* court of that dis-

trict. If the vessel has not been libeled, and the owner has been sued in another district than the one in which the vessel then is, the proceeding is to be had in the *admiralty court* of the district in which the vessel then is. The rule in its distribution of the jurisdiction of such proceeding was thus brought into entire harmony with the general principles of jurisprudence." (Italics ours.)

Benedict on Admiralty, Fifth Edition, Vol. I, Par. 489, states the rule thus:

"The proceeding of a shipowner, in limitation of his liability, is to be taken in the District Court, sitting in admiralty. (*Norwich & N. Y. Transp. Co. vs. Wright*, 80 U. S. (13 Wall.), 104, 20 L Ed. 585; *Providence & N. Y. S. S. Co. vs. Hill Mfg. Co.*, 109 U. S. 578, 27 L Ed. 1038, 3 Sup. St., Rep. 379, General Admiralty Rule 54.) In *Elwell vs. Geibi* (*Elwell vs. Gebei*, 33 Fed. 71, a proceeding in equity but wrongly reported as in admiralty; *Goodrich Transp. Co. vs. Gagnon*, 36 Fed. 123), the complainant sought the aid of the Circuit Court, sitting in equity, for the relief given by the statute, but the court held that it was not the proper forum in which to obtain the relief asked. In *The Mary Lord* (31 Fed. 416), a vessel was held liable in the District Court, and, after appeal to the Circuit Court and affirmance, the shipowner filed in the latter court his petition for limitation; it was dismissed, the court holding that the petition should have been filed in the District Court. General Admiralty Rule 55 provides that the rules and regulations governing causes in limitation of liability shall apply to the Circuit Courts of Appeals of the United States, where such causes are or shall be pending in said court on appeal from the District Court."

And in Par. 480:

"The monition which issues when the vessel has been surrendered, or when a stipulation has been entered into to pay the value into court, requires every person to assert his claim in the limitation proceeding, which is in its very nature exclusive of separate suits against the owner of the ship by "reason of his ownership. (See, however, *ante*, No. 474, relative to claims not subject to limitation.) The issuance of an injunction is not necessary to stop proceedings in separate or independent suits upon such claims, though the power to grant an injunction exists, when necessary to maintain the exclusiveness of the jurisdiction, and a restraining order is usual. The nature of the proceedings and the issuance of monition have the effect of a statutory injunction. (The *San Pedro*, 223 U. S. 365, 56 L. Ed. 473, 32 Sup. Ct. Rep. 275; *Providence & N. Y. S. S. Co. vs. Hill Mfg. Co.*, 109 U. S. 578, 27 L. Ed. 1038, 3 Sup Ct. Rep. 379; *The Tolchester*, 42 Fed. 180; *In re Old Dominion S. S. Co.*, 115 Fed. 845; *In re Whitelaw*, 71 Fed. 733; *Dowdell vs. U. S. District Court*, 139 Fed. 444; *Societe Naphthes Transports vs. Bisso Towboat Co.*, 241 Fed. 463, certiorari denied 245 U. S. 652, 62 L. Ed. 532, 38 Sup. Ct. Rep. 11. We may consider *The Lotta*, 150 Fed. 219, overruled, *In re Oceanic Steam Nav. Co.*, 204 Fed. 260, the restraining order was modified so that, while staying the prosecution, it permitted the formal commencement of suits by death claimants in order that such suits might not be barred if the petitioner's liability were not limited and the court's power to adjudicate the claims while dismissing the petition were not sustained. And the court, in limitation proceedings begun after verdict but before judgment in a state court, may allow the state court proceedings to go to

judgment for the purpose of establishing the amount to which the limitation is to be applied: (*Davenport vs. Winnisimmet Co.*, 162 Fed. 862, certiorari denied 212 U. S. 576, 53 L. Ed. 657, 29 Sup. Ct. Rep. 684.) Pending the determination of the limitation proceeding, however, actions before begun upon the claims are but suspended and security given therein is not vacated by the institution of the limitation proceeding nor will the court vacate such security, if both proceedings are before it (*Huasteca Petroleum Co. vs. Cia de Navegacao Lloyd Brasileiro*, 297 Fed. 318, reported *sub nom. The Pelotas*, 1924 A. M. C. 286), unless its discretion is moved by special considerations (*Societe Napthes Transports vs. Bisso Towboat Co.*, 241 Fed. 463.)

"One of the purposes of the Limited Liability Act is to bring about the settlement in one proceeding of all claims arising from a common disaster. (*Butler vs. Boston, etc., S. S. Co.*, 130 U. S. 527, 32 L. Ed. 1017, R. Sup. Ct. Rep. 612; *Dowdell vs. U. S. District Court*, 139 Fed. 444; *In re Pac. Mail S. S. Co.*, 130 Fed. 76, certiorari denied, 195 U. S. 632, 49 L. Ed. 353, 25 Sup. Ct. Rep. 790; *Oregon R. & Nav. Co. vs. Balfour*, 90 Fed. 295, appeal dismissed, 179 U. S. 55, 45 L. Ed. 82, 21 Sup. Ct. Rep. 28. In limitation proceedings the power of the admiralty court is similar and as extensive as the power of chancery court in an equity proceeding); *Oregon R. & Nav. Co. vs. Balfour*, 90 Fed. 295, appeal dismissed 179 U. S. 55, 45 L. Ed. 82, 21 Sup. Ct. Rep. 28. Scope of issues adjudicated, see *The Adah*, 245 Fed. 378, affirmed 258 Fed. 377.) Such a proceeding is in its very nature a consolidation of actions (*Boston Marine Ins. Co. vs. Metropolitan Redwood Lumber co.*, 197 Fed. 703, 714.)"

Not only is the admiralty court the only proper or permissible place in which to file a limitation of liability proceeding, but it is equally well settled that having once thus secured jurisdiction, that jurisdiction becomes absolutely exclusive. To quote further from Benedict, Sec. 510:

> "As we have explained above, where proceedings are regularly taken and monition duly issued, the jurisdiction of the court to hear and determine every claim becomes exclusive and it is the duty of every other court, Federal or State, to stop all further proceedings in separate suits upon claims to which the Limited Liability Act applies, nor is the issuance of an injunction necessary to stop proceedings in separate or independent suits upon such claims but the very nature of the proceeding and of the monition has the effect of a statutory injunction. (*The San Pedro*, 223 U. S. 365, 56 L. Ed. 473, 32 Sup. Ct. Rep. 275.) Power to grant an injunction exists, however, under Revised Statutes No. 4285, where necessary to maintain the exclusiveness of the jurisdiction, and General Admiralty Rule 51 provides, as in the matter of the monition, that 'upon compliance with' the other for payment into court of the appraised value or the giving of security therefor or upon surrender to a trustee, the court shall, upon application, make an order restraining the further prosecution of all and any suits against the owner in respect of any claims arising out of the damage or loss in question. This must be deemed to be the general restraining order which not only stays the further prosecution of suits already begun but also forbids the institution of other suits. As a matter of law there would not seem to be necessity for haste in the issuance of the injunction but as a matter of

practically securing compliance with the law the restraining order should be procured at once. In order to have the injunction not merely legally effective but actually obeyed, it is the practice of some proctors to procure not only a general restraining order incorporated in the order directing a monition to issue but also, at the same time, to secure a special restraining order designating the specific suits or actions which have been instituted and which are to be stayed. This additional order is in no sense necessary, and, academically considered, adds nothing, but its service compels the ignorant and obstinate to pay immediate heed. An injunction will set aside the attachment of a sheriff or stay an action about to be brought to trial in a State court (*Providence & N. Y. S. S. Co. vs. Hill Mfg. Co.*, 109 U. S. 578, 27 L. Ed. 1038, 3 Sup. Ct. Rep. 379. The case of *Knowlton vs. Providence & N. Y. S. S. Co.*, 53 N. Y. 76, was not referred to in the above case, but must be deemed overruled. See also *In re Whitelaw*, 71 Fed. 733), or in a Federal Court at commn law (*Sees's Adm'x vs. Monongahela River Consol. Coal & Coke Co.*, 155 Fed. 507.

"In *In re Norwich and New York Transportation Company* (10 Ben. 193, Fed. Cas. No. 10361), it was held that the injunction would not restrain attorneys in actions already begun in other courts, from collecting their costs in these actions. The late practice, however, is for the District Court to compel the payment of such costs by providing for their payment in the final decree granting the limitation."

The City of Boston, 159 Fed. 261.

Respondent's theory is, therefore, not only contrary to *all* authority, but, as we have pointed out, is

contrary to the rules and expressed language of the statute.

Section 4285 R. S. provides that after transfer to the trustee

> "from and after which transfer all claims and proceedings against the owner shall cease."

This prohibition against the maintenance of any other action obtains with equal force where in lieu of the surrender of the vessel stipulation has been entered into as provided by admiralty Rule 54, in the *San Pedro* (1912), 223 U. S. 365, 56 U. S. (L. Ed. 473), the Supreme Court having expressly held:

> "The view we take of the statutory injunction declared by Section 4285, and of its application to cases where the vessel has been surrendered and a stipulation entered into as a proceeding tantamount to a transfer of the ship as authorized by Section 4285, is fully supported by the leading case of *Providence etc. Steamship Co. vs. Hill Mfg. Co.* (1883), 109 U. S. 578, 594, 599, 600 and 601 (3 S. Ct. 379, 617, 27 U. S. [L. Ed.] 1038). That was a suit in a state court againts the owner of a steamship to recover for goods lost by the burning of a steamer. While the suit was pending the owner filed his petition in the proper District Court for the benefit of the limited liability statute. The proceedings seem to have been conducted in accordance with admiralty Rule 54, *but in addition the petitioners made application as permitted by that rule, for an order restraining the prosecution of 'all and any suits' against the owner* in respect of claims subject to the provi-

sions of the Act. The owner and defendant in the suit pending in the state court thereupon, by plea, set up the limited liability suit as a reason why the state court should proceed no further. This was overruled. Later the defendant therein pleaded the final decree in the liability suit as a bar to any decree in the state court against him, as owner. This, too, was disregarded and a decree rendered against the owner for the claim for damages caused by the burning of the steamer and the plaintiff's goods. This was affirmed in the Supreme Judicial Court of Massachusetts and brought here upon a writ of error. After a consideration of the meaning and purpose of the Limited Liability Act of 1851 (March 3, 1851, 9 Stat. 633, c. 43), sections 4283, 4284 and 4285, Revised Statutes, and of admiralty Rule 54, the court said (p. 594): 'We have deemed it proper to examine thus fully the foundation on which the rules adopted in December term, 1871, were based, because if those rules are valid and binding (as we deem them to be), it is hardly possible to read them in connection with the Act of 1851, without perceiving that after proceedings have been commenced in the proper district court in pursuance thereof, the prosecution *pari passu* of distinct suits in different courts, or even in the same court by separate claimants, against the shipowners, is, and must necessarily be, utterly repugnant to such proceedings and subversive of their object and purpose.' Later the court added (pp. 599, 600): 'Proceedings under the Act having been duly instituted in this court it acquired *full jurisdiction of the subject matter;* and having taken such jurisdiction, and procured control of the vessel and freight (or their value), constituting the fund to be distributed and issued its monition to all parties to appear and present their claims, *it became the*

duty of all courts before which any of such claims were prosecuted, upon being properly certified of the proceedings, to suspend further action upon said claims . . . The operation of the Act in this behalf, cannot be regarded as confined to cases of actual transfer (which is merely allowed as a sufficient compliance with the law), but must be regarded, when we consider its reason and equity and the whole scope of its provisions, as extending to cases in which what is required and done is tantamount to such transfer; as where the value of the owners interest is paid into court, or secured by stipulation and placed under its control, for the benefit of the parties interested.' "

To the same effect see: *The Amsterdam*, 23 Fed. 112, and *The Tolchester*, 42 Fed. 180.

Likewise, in harmony with the express language of the statute is admiralty Rule 53, which provides *inter alia*, as follows:

> "*In the proceedings aforesaid the said owner or owners shall be at liberty to contest his or their liability*, or the liability of said ship or vessel for said embezzlement, loss, etc." (Italics ours.)

and not be forced to try out the question of liability before a jury in some other court as respondent would have it.

As a final word in answer to this theory of respondent, which is really not an open question at all, we would refer to the language of Judge Purnel in *In re Old Dominion S. S. Co.*, 115 Fed. 845:

"The argument that this suit (the liability proceedings in the admiralty court) should be left open until the same can be tried in the Circuit Court and the question of negligence passed on by a jury is without force. The jurisdiction of this court in such cases is ample and complete—*it is absolute.*" (Italics ours.)

Contemporaneously with the case at bar there was pending before the trial court the case of *The Salmon King*, decided February 9, 1928, and reported 1928 A. M. C. 464, in which were raised almost the identical issues herein presented to the court, and which was briefed and argued by the writer on behalf of the petitioner in that case.

For the convenience of the court, as well as to furnish a concise and authoritative summary of the foregoing discussion, we herewith set forth the text of the last mentioned decision:

"The petitioner seeks to limit liability for injury sustained by a seaman. An action was commenced in the state court by the injured seaman, and the state court proceeding was enjoined in this proceeding. The claimant now appears and moves the dissolution of the restraining order and that the limitation proceeding be dismissed, for the reason that the state court has jurisdiction; that there is only one claimant and one owner, that the exemption may be claimed in the state court by proper pleading, *Carlisle Packing Co. vs. Sandanger,* 259 U. S. 255, and that by this proceeding he is denied the right of trial by jury pursuant to

Sec. 9, Judiciary Act, 1789, and Sec. 33 of the Merchant Marine Act, 1920.

"NETERER, D. J.:

"Claimant cites in support of his motion, *Carlisle Packing Co. vs. Sandanger, supra; Lotta*, 150 Fed. 219; *Delaware River Ferry Co. vs. Amas*, 179 Fed. 756; *Eureka No. 32*, 108 Fed. 672; *Rosa*, 53 Fed. 132; *Great Western*, 118 U. S. 520; *Scotland*, 105 U. S. 24; and *Bolikow; Hartford Accident & Indemnity Co. vs. Southern Pacific Co.*, 1927 A. M. C. 402, 273 U. S. 207, in which Chief Justice Taft said, at pages 406-7:

" 'The proceeding partakes in a way of the features of a bill to enjoin a multiplicity of suits, a bill in the nature of an interpleader and a creditor's bill. It looks to a complete and just disposition of a many cornered controversy and is applicable to proceedings in *rem* against the ship as well as to proceedings in *personam* against the owner, the limitation extending to the owner's property as well as to his person.'

"This was an action to recover on a stipulation given in lieu of the vessel. At page 408, the Chief Justice further said:

" 'Where a court of equity has obtained jurisdiction over some portion of a controversy, it may and will in general proceed to decide all the issues and award complete relief even where the rights of parties are strictly legal and the final remedy granted is of the kind which might be conferred by a court of law.'

"And enforced the liability upon the *ad interim* stipulation. At bar it was admitted that this court acquired jurisdiction by filing of the petition.

"This court has uniformly, since *White vs. Island Transp. Co.*, 233 U. S. 346, entertained jurisdiction to limit liability where there was a single claimant or a single owner. The Supreme Court in *White vs. Island Transp. Co., supra*, held that R. S. 4283 broadly declares that liability for any damages occasioned without the privity or knowledge of the owner, shall not exceed the value of the vessel and pending freight, and that the succeeding sections relate to procedure, and that plurality of claims is not essential.

"The Court of Appeals of the Circuit, in *Shipowners' & M. T. Co. vs. Hammond Lbr. Co.*, 218 Fed. 161, held that the rule is established by the *White* case, *supra*, that the limited liability act of Congress authorized a proceeding for limitation of liability 'whether there is a plurality of claims or only one.'

"Circuit Judge Learned Hand, in the *George W. Fields*, 237 Fed. 403, said:

"'It is now settled that a single claim will support a limitation proceeding.'

Circuit Judge Rudkin for the court in *Strong vs. Holmes*, 238 Fed. 554, said:

"'The value of the vessel, or that there is but one claimant, is immaterial.'

"To the same effect are T. W. Wellington, 235 Fed. 728; Tug No. 16, 237 Fed. 405; Erie Lighter No. 108, 250 Fed. 490; and Acquitania, 1926 A. M. C. 1071, 14 F. (2d) 456.

"Several of the cases cited by the claimant have been expressly disapproved. That liability may be limited where there is a single claim and a single owner as against a common law action, is

stare decisis. The right asserted to a common law action and a jury trial has likewise been determined against the claimant's contention in this court, *Victoria,* 1926 A. M. C. 1096, 3 F. (2d) 330, and by the Supreme Court, *Edward; In Re East River Towing Co.,* 1925 A. M. C. 33, 266 U. S. 355. In the *Edward* the Circuit Court of Appeals of the 2nd Circuit certified to the Supreme Court two questions (1923 A. M. C. 700):

" '1. If an action at law be brought such as is described in Merchant Marine Act 1920, Sec
33 (41 Stat. 1007), can the prosecution thereof be enjoined by the injunction provided for in Admiralty Rule 51?

" '2. Has Merchant Marine Act 1920, Sec. 33, impliedly repealed the statute regarding limitation of liability of shipowners, so far as claims or suits based on personal injuries to or death of seamen are concerned?

"And the court held that an action at law under Sec. 33 of the Merchant Marine Act to recover damages for the death of a seaman form personal injuries suffered in the course of his employment, is subject to the injunction provided for by Admiralty Rule 51, Admiralty Rules of Practice, 254 U. S. 25, in aid of limitation of liability proceedings; and in answering the second question held that Sec. 33 of the Merchant Marine Act did not impliedly repeal the statute regarding limitation of liability of the shipowner, so far as claims or suits based on personal injuries to or death of the seamen are concerned.

"At page 35, in *Edward, supra:*

" 'The starting point is that the later act determines the extent of the seaman's substantive rights and the measure of damages, *Alliance;*

Panama R. R. Co. vs. Johnson, 1924 A. M. C. 551, 264 U. S. 375, 391 * * *. If there is no surrender of the ship, which we presume is made relatively rarely, the limited liability statutes play no part. Section 33 has no relation to means of collection but only to principles of liability and the ordinary course of trial. Naturally therefore the limited liability laws are not mentioned in the list of statutes repealed in Sec. 2; yet there can be no doubt that those laws would apply unless repealed. No sufficient reason is offered for the extraordinary preference over other claims that would be given to seamen where the decree of the District Court sustained. When a preference in respect to seamen's wages was intended it was expressed * * *. On the other hand it has been laid down with reference to this same Sec. 33 that an intention to depart from a policy deliberately settled in a general statute is not lightly to be assumed * * *. The wholesale adoption of the law for railroads above mentioned must be taken as an adoption of principles, not as a basis for meticulous discovery of conflict with an established system in matters of detail. The choice of a jury trial is given in matters of detail. The choice of a jury trial is given when things take their ordinary course, not to break in upon the settled mode of adjustment when the ship is given up.'

"The contention that the suit continue in the state court and the question of negligence and amount of damages be passed on by a jury, and the right of limitation continue in this court, would confound the issue and lead to interminable confusion. A divided jurisdiction could serve no useful purpose. State courts are impotent to administer the limitation act. Admiralty Rule 54 fixes liability procedure in the district court. Under Admiralty Rule 53 the owner is at liberty

to contest his liability. Under Admiralty Rule 51 the district court on application shall make an order to restrain the further prosecution of suits against the owner in respect to such claim or claims, and upon surrender of the vessel 'from and after which transfer, all claims and proceedings against the owner shall cease.' R. S. 4285; and of equal force, in lieu of surrender, is a stipulation entered under Admiralty Rule 54, San Pedro, 223 U. S. 365.

"State courts have not the requisite jurisdiction, and in the language of Justice Bradley, in *Norwich & N. Y. Transp. Co. vs. Wright,* 80 U. S. 104, 'no court is better adapted than a court of admiralty to administer precisely such relief.'"

WHEREFORE, it is respectfully submitted that the decree of the Circuit Court of Appeals for the Ninth Circuit should be reversed, with directions to affirm the decree of the District Court.

Respectfully submitted,

H. B. JONES,

ROBERT BRONSON,

Proctors for Petitioner.